

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERBERT TREVON WHITES,

Defendant-Appellant.

UNPUBLISHED

April 2, 1999

No. 207689

Kent Circuit Court

LC No. 96-008121 FH

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), for which he was sentenced to one to twenty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant challenges the trial court's denial of his motion to suppress. Defendant's challenge is unavailing for a number of reasons. First of all, defendant's motion to suppress did not allege any violation of his constitutional protections against unreasonable searches and seizures, but alleged that the drug evidence in question was the inadmissible fruit of an illegal warrantless body cavity search in violation of MCL 764.25b; MSA 28.884(2). However, the exclusionary rule only applies when a seizure is constitutionally invalid -- not merely statutorily illegal. *People v Lyon*, 227 Mich App 599, 610-611; 577 NW2d 124 (1998), lv den 459 Mich 880 (1998).

Even if the exclusionary rule were applicable, there was no violation of the body cavity search statute in this case because there was no physical intrusion into defendant's body cavity by any law enforcement officer or employee of a law enforcement agency. See MCL 764.25b(1)(b); MSA 28.884(2)(1)(b). Rather, at deputy Demory's urging, defendant removed the contraband from his rectal cavity himself. Moreover, the trial court found that defendant was not compelled or coerced into doing so but voluntarily consented to removing the cocaine himself. In light of the law enforcement officers' testimony, we are unpersuaded that the trial court's findings are

clearly erroneous. *People v Marsack*, 231 Mich App 364, 378; ___ NW2d ___ (1998).

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff